Her Excellency Ursula von der Leyen
President of the European Commission

Her Excellency Kaja Kallas
High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission

His Excellency Maroš Šefčovič
Commissioner for Trade and Economic Security

Berlaymont Building, Rue de la Loi 200
B-1049 Brussels, Belgium

Re: Legal basis for a Regulation prohibiting trade with the unlawful Israeli settlements (Article 207 TFEU)

Dear President von der Leyen, dear High Representative Kallas, dear Commissioner Šefčovič,

We write as scholars of EU and international law to set out why Article 207 TFEU is the correct legal basis for a Regulation prohibiting trade with the unlawful Israeli settlements, not unanimous Council action under the Common Foreign and Security Policy (CFSP). Claims that such a prohibition can only be adopted through CFSP unanimity are inconsistent with CJEU case law on the determination of the appropriate legal basis, and are grounded in political rather than legal considerations. As the Commission prepares options on trade measures concerning the settlements ahead of the July Foreign Affairs Council, any resulting proposal for a Regulation should, for the reasons set out below, be based on Article 207 TFEU.

An international legal obligation

The 2024 Advisory Opinion of the International Court of Justice (ICJ) on the *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory* (OPT) confirms the unlawful nature of Israel's occupation of the OPT and elaborates on the duties of other States with respect to the recognition and facilitation of the occupation. In that regard, it should be noted that the EU Court of Justice has ruled that, in its acts, the EU is "bound to observe international law in its entirety" (Case C-366/10 *Air Transport Association of America*, EU:C:2011:864). Thus, the EU is bound by the duties of non-recognition and non-assistance that the ICJ confirmed apply to the occupation. The former entails the obligation to abstain "from any recognition of its illegal presence in the [OPT]" in its diplomatic relations with Israel; the latter requires States to abstain from dealings with Israel concerning the OPT that "may entrench its unlawful presence in the territory" and "to take steps to prevent trade or

investment relations that assist in the maintenance of the illegal situation created by Israel in the [OPT]" (2024 Advisory Opinion, 278).

The CJEU has recognised this obligation of distinction as binding under EU law. In *Brita* (Case C-386/08, EU:C:2010:91), the Court held that products originating in the West Bank fall outside the territorial scope of the EU–Israel Association Agreement and therefore do not qualify for the preferential tariff treatment granted to goods originating in Israel. In *Psagot* (Case C-363/18, EU:C:2019:954), the Grand Chamber went further, holding that foodstuffs originating in territories occupied by Israel must bear an indication of that territory of origin, and, where they come from an Israeli settlement, an indication of that provenance, reasoning grounded in part on the relevance of international humanitarian law and the EU's duty of non-recognition. Settlement goods are thus already treated by the Court as legally and territorially distinct from goods originating in Israel.

Whereas Union policy is generally consistent with the duty of non-recognition, it is failing regarding its obligation of non-assistance. Although the EU–Israel Association Agreement does not extend to goods originating in the unlawful settlements, as the Court confirmed in *Brita*, a recent investigation by the Global Echo Litigation Center based on an analysis of over 30,000 export documents, *Importing Occupation* (June 2026), found that nearly one in five agricultural shipments bound for the EU originated in Israeli settlements were being mislabelled as Israeli-origin in order to claim the preferential treatment reserved for goods genuinely falling within the Agreement's scope. Even where correctly labelled, however, settlement goods are not barred from the EU market: they are merely denied preferential tariff treatment and otherwise enter freely under standard customs duties.The result is that EU trade policy continues, in practice, to facilitate the economic integration of the unlawful settlements into the Union market, precisely the outcome the ICJ's non-assistance obligation requires the EU to prevent.

Legal feasibility under EU law

There is a growing consensus that the EU must take action to restrict trade with the unlawful Israeli settlements, prompting discussions on how to do so either through the Common Commercial Policy (CCP) or the CFSP. We submit that Article 207 TFEU, falling under the CCP, is the appropriate legal basis, for three reasons.

First, CJEU case law establishing the boundary between the CCP and CFSP legal bases supports the use of Article 207 TFEU. The Court has ruled that Article 207 TFEU must be used where the measure "relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade" (*Daiichi Sankyo*, 51; Opinion 2/15 (*Singapore Free Trade Agreement*, 36). The relevant test under this case law

therefore does not turn on whether a trade measure has a foreign-policy motivation (virtually every restrictive trade measure does). A measure prohibiting trade with the unlawful Israeli settlements satisfies that test: its operative content would regulate the import of goods and services, and any foreign-policy dimension, however salient politically, would be incidental to that content rather than constitutive of it. The ECJ judgment on the Partnership Agreements with Kazakhstan (Case C-244/17, *Commission v Council* (Kazakhstan), in which the Court found that the relevant measures had erroneously been adopted on CFSP provisions, confirms this approach.

Second, the contrary view (that a measure addressing trade with an occupying power's settlements is necessarily a CFSP act) does not withstand scrutiny under this case law. If it did, virtually no trade restriction adopted in response to a violation of international law could ever proceed under Article 207 TFEU, since such measures are by their nature responses to conduct the EU considers unlawful. The Court's case law asks a narrower and more precise question: not whether the measure has geopolitical significance, but whether its operative provisions govern trade. Settlement goods restrictions meet that narrower test.

Third, EU precedent supports the use of Article 207 TFEU for measures of this kind. EU measures adopted on a CCP legal basis, despite the presence of comparable foreign-policy elements, include the thematic prohibitions on products associated with forced labour, torture, and conflict minerals, as well as the Anti-Coercion Instrument.The regulations prohibiting Russian gas imports and increasing tariffs on Russian and Belarusian agricultural goods and fertiliser were likewise adopted on the basis of Article 207 TFEU.

Article 207 TFEU is therefore the appropriate legal basis to prohibit EU trade with the unlawful Israeli settlements, consistent with both CJEU case law and recent legislative practice, and required for the realisation of the EU and its Member States' obligations under international law.

Yours faithfully,

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